

**Notice of Allowability****Application No.**

10/726,949

**Applicant(s)**

BELALCAZAR ET AL.

**Examiner**

Michael Apanius

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to the amendment filed on 7/11/2006.
2.  The allowed claim(s) is/are 1-43.
3.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All
  - b)  Some\*
  - c)  None of the:
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date 20060711
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application
6.  Interview Summary (PTO-413),  
Paper No./Mail Date 20060920.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

### **EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

2. Authorization for this examiner's amendment was given in a telephone interview with Craige Thompson on 9/22/2006.

3. The application has been amended as follows:

- At claim 7, line 1, "claim 2" has been changed to --claim 1--.
- At claim 22, line 4, "positioned" has been changed to --adapted to be positioned--.
- At claim 22, line 6, "electrodes being" has been changed to -- electrodes for being--.
- At claim 22, line 8, "attached" has been changed to --adapted to be attached--.
- At claim 26, line 1, "positioned" has been changed to --adapted to be positioned--.
- At claim 26, line 2, "positioned" has been changed to --adapted to be positioned--.
- At claim 27, line 1, "attached" has been changed to --adapted to be attached--.
- At claim 27, line 2, "attached" has been changed to --adapted to be attached--.
- Claim 36 has been amended to read as follows:

36. (Currently amended) The apparatus of claim 25, wherein the receiver receives information about a second electrical current injected between a third internal electrode and the second internal electrode, the third internal electrode for being implanted in the body and adapted to be positioned such that a portion of the injected current flows

through the lung, and wherein the interface receives a second voltage signal detected by a third external electrode and the second external electrode, the third electrode for being attached to the skin in the suprasternal notch region, and the second external electrode for being attached to the postero-lateral region of the right thorax, medially over the ribs.

- At claim 37, line 1, "positioned" has been changed to --adapted to be positioned--.
- At claim 41, line 2, "in the body" has been deleted.

4. The following is an examiner's statement of reasons for allowance: Applicant's arguments were persuasive and the outstanding rejections from the previous office action are withdrawn. No prior art of record teaches or fairly suggests injecting an electrical current between two internal electrodes, measuring a voltage between two external electrodes, the voltage being induced by said injected current, and calculating an impedance by taking a ratio of said injected current and said measured voltage.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5,782,774 and US 6,095,987 and US 6,496,732 discloses various impedance measurements using internal and external electrodes but do not disclose the claimed measurement configuration.

6. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Apanius whose telephone number is (571) 272-5537. The examiner can normally be reached on Mon-Fri 8am-4:30pm.

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MA



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